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November 29, 2004

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MAIL STOP AMENDMENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:

ATTILIO TOMASI, et al.

Filed: October 31, 2003

Serial No.: 10/698,737

For: CRYSTALLINE FORM II OF
CABERGOLINE

§ Conf. No.: 3128

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Art Unit: 1625

Examiner: Charanjit Aulkakh

Docket No.: H053912.0133US0.

Customer No.: 01200

RESPONSE

This Response is directed to the Office Action mailed October 8, 2004, Applicants have studied the Examiner's comments. Claims 1-7 and 12 are currently pending. In view of the following remarks, Applicants respectfully submit that the application is in condition for allowance.

REMARKS

Claims 1-7 and 12 are rejected over claims 1-11 of U.S. Patent No. 6,727,363 for obviousness-type double patenting. The Examiner acknowledges that pending claims 1-7 and 12 are not identical to claims 1-11 of U.S. Patent No. 6,727,363 but holds they are not patentably distinct from each other because claims 1-7 and 12 to a process for producing crystalline Form I of cabergoline with greater than 95% purity are encompassed by the process claimed in the cited patent. Applicants disagree with this basis for the rejection. Applicants submit that the question of obviousness-type double patenting is not determined by whether the claims of the cited patent encompass (or dominate) claims 1-7 and 12 but whether the production of crystalline Form I of